DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
2098 Gaither Road
Rockville MD 20850

Ms. Tonya Mallory
Executive Manager
Wako Chemicals USA, Inc.
1600 Bellwood Road
Richmond, VA 23237

MAY 19 2005

Re: K041847
Evaluation of Automatic Class III Designation
Wako LBA AFP-L3
Regulation Number: 21 CFR 866.6020
Classification: Class II
Product Code: NSF

Dear Ms Mallory:

The Center for Devices and Radiological Health (CDRH) of the Food and Drug Administration (FDA) has completed its review of your petition for classification of the Wako LBA AFP-L3 that is intended as a risk assessment test for the development of hepatocellular carcinoma (HCC) in patients with chronic liver diseases. Patients with elevated AFPL3% values (≥ 10%) have been shown to be associated with a seven-fold increase in the risk of developing HCC within the next 21 months and should be more intensely evaluated for evidence of HCC according to the existing HCC practice guidelines in oncology.

FDA concludes that this device, and substantially equivalent devices of this generic type, should be classified into class II. This order, therefore, classifies the Wako LBA AFP-L3, and substantially equivalent devices of this generic type into class II under the generic name, AFP-L3% immunological test system. This order also identifies the special controls applicable to this device.

FDA identifies this generic type of device as:

21 CFR 866.6020 AFP-L3% Immunological Test System. An AFP-L3% immunological test system is an in vitro device that consists of reagents and an automated instrument used to quantitatively measure by immunochemical techniques AFP and AFP L3 subfraction in human serum. The device is intended for *in vitro* diagnostic use as an aid in the risk assessment of patients with chronic liver disease for progression to hepatocellular carcinoma in conjunction with other laboratory findings, imaging studies and clinical assessment.

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(f)(1)) (the act), devices that were not in commercial distribution prior to May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976 (the amendments)), generally referred to

as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or 11 or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act (21 U.S.C. 360c(i)), to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and Part 807 of the FDA regulations (21 CFR 807).

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) for a device may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1), request FDA to classify the device under the criteria set forth in section 513(a)(1). FDA shall, within 60 days of receiving such a request classify the device. This classification shall be the initial classification of the device type. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** classifying the device type.

On April 7, 2005, FDA filed your petition requesting classification of the Wako LBA AFP-L3 into class II. The petition was submitted under section 513(f)(2) of the act. In accordance with section 513(f)(1) of the act, FDA issued an order on April 1,2005, automatically classifying the Wako LBA AFP-L3 in class III, because it was not within a type of device which was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, which was subsequently reclassified into class I or class II. In order to classify the Wako LBA AFP-L3 into class I or 11, it is necessary that the proposed class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

After review of the information submitted in the petition, FDA has determined that the Wako LBA AFP-L3 that is intended as a risk assessment test of patients with chronic liver diseases for progression to hepatocellular carcinoma in conjunction with other laboratory findings, imaging studies and clinical assessment can be classified in class 11 with the establishment of special controls. FDA believes that class II special controls provide reasonable assurance of the safety and effectiveness of the device.

FDA has identified no direct risks to health related to use of AFP-L3% immunological test system. However, failure of the system to perform as indicated or error in interpretation of results, could lead to inappropriate risk assessment and improper management of patients with chronic liver diseases. Specifically, a falsely low AFP-L3% could result in a determination that the patient is at a lower risk of developing hepatocellular carcinoma which could delay appropriate monitoring and treatment. A falsely high AFP-L3% could result in a determination that the patient is at a higher risk for hepatocellular carcinoma, which could lead to unnecessary evaluation and testing, or inappropriate treatment decisions. Use of assay results without consideration of other laboratory findings, imaging studies and clinical assessment in routine monitoring by a physician could pose a risk. The measures FDA recommends to mitigate these risks are described in the guidance document, "Class II Special Controls Guidance Document: AFP-L3% Immunological Test Systems", which includes recommendations for performance validation and labeling.

In addition to the general controls of the act, AFP-L3% immunological test systems are subject to the following special controls: "Class II Special Controls Guidance Document: AFP-L3% Immunological Test Systems". Section 510(m) of the act provides that FDA may exempt a class 11 device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. FDA has determined premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device and, therefore, the device is not exempt from the premarket notification requirements. Thus, persons who intend to market this device must submit to FDA a premarket notification submission containing information on the AFP-L3% immunological test system they intend to market prior to marketing the device.

A notice announcing this classification order will be published in the **Federal Register.** A copy of this order and supporting documentation are on file in the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Room 1061, Rockville, MD 20852 and are available for inspection between 9 a.m. and 4 p.m., Monday through Friday.

As a result of this order, you may immediately market this device, subject to the general control provisions of the act and the special controls identified in this order.

If you have any questions concerning this classification order, please contact Maria Chan at (240) 276-0493.

Sincerely yours,

Steven I. Gutrnan, M.D., M.B.A.
Director
Office of In Vitro Diagnostic Device
Evaluation and Safety
Center for Devices and Radiological Health